

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DUSTIN HOBBS, Complainant, v. IES UTILITIES INC., Respondent.	DOCKET NO. FCU-01-2 (C-01-535)
---	-----------------------------------

**ORDER DOCKETING FORMAL COMPLAINT PROCEEDINGS AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued December 18, 2001)

On September 4, 2001, Dustin Hobbs filed with the Utilities Board (Board) an informal complaint against IES Utilities Inc. (IES), concerning the transfer of an unpaid balance for gas and electric service at 1010 S. 4th Street in Burlington, Iowa, from the account of Michael and Heidi Spiker to Mr. Hobbs' account at 404 S. Main in Danville, Iowa. The Board gave IES written notice of the informal complaint. IES filed a response stating that both Mr. Hobbs and Heidi Spiker had lived at the 1010 S. 4th Street address and therefore benefited from the service and were therefore liable for the past due amount. IES stated that since the service at 1010 S. 4th Street was both gas and electric and the service at 404 S. Main was only

gas, only the gas portion of the past due bill would be applied to the 404 S. Main account.

In accordance with 199 IAC 6.4, Board staff notified Mr. Hobbs by letter dated October 31, 2001, that IES's response was being accepted as a proposed resolution of the informal complaint and that Mr. Hobbs had 14 days to file a request for formal complaint if he was not satisfied with the resolution. On November 14, 2001, Mr. Hobbs filed a request for formal complaint proceedings. On November 27, 2001, Mr. Hobbs filed a motion for a formal hearing alleging that the practice of adding former customers' past due bills to current customer or prospective customer accounts, based upon the benefit the current customer received, is a widespread practice and the Board should address the issue after a full evidentiary hearing. Mr. Hobbs requests that the Board assess civil penalties against IES for the practice.

On December 3, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a statement in support of formal complaint proceedings. Consumer Advocate stated that it agrees that a Board decision of the legality of the challenged practice would be beneficial and an evidentiary hearing is necessary to resolve the factual issues in this matter.

Iowa Code § 476.3(1) (2001) provides, in part, that following informal complaint proceedings, "[t]he complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint." This is the standard the Board applies to requests for formal complaint proceedings.

Subrule 199 IAC 6.7 makes all documents contained in the file of an informal complaint proceeding part of the record in a formal complaint proceeding. Thus, in determining whether there is any reasonable ground for instituting formal complaint proceedings, the Board reviews the entire file.

There are factual issues in the informal complaint proceedings that provide reasonable grounds for a hearing. In addition, legal questions are raised that should be formally addressed. Pursuant to the provisions of 199 IAC 6.5(3), the Board will initiate formal complaint proceedings in this matter. The formal proceedings will be identified as Docket No. FCU-01-2. The Board will establish a procedural schedule for prefiled testimony and an evidentiary hearing.

The Board has reviewed the relief requested by Mr. Hobbs and finds that the request for civil penalties is not a proper remedy in this proceeding. Under the provisions of Iowa Code § 476.51(2001), a utility must first be put on written notice of a specific violation before the utility is potentially subject to civil penalties. If IES is found in this docket to have violated a provision of Iowa Code chapter 476, a Board rule, or an order of the Board, it may then be put on written notice of that violation and potentially be subject to civil penalties if the violation reoccurs.

Additionally, the Board finds that certain issues should be addressed by the parties to ensure that a full record is developed so the Board may render an informed decision. Below is a list of questions that the parties shall address in their testimony.

1. The file in this matter indicates that the service at 1010 S. 4th Street in Burlington, Iowa, was established in the name of Michael and Heidi Spiker, husband and wife. Please provide the date this service was established and whether any unpaid balance from a previous account was applied to this account. Please provide any documentation to support the responses provided.

2. The file indicates that Michael Spiker and Heidi Spiker separated in February 2000 and Mr. Hobbs at some time moved into the residence at 1010 S. 4th Street. When did Mr. Hobbs move into the residence at 1010 S. 4th Street, and was IES ever informed that Mr. Spiker no longer resided at the address or informed that Mr. Hobbs was a resident?

3. Did Mr. Hobbs maintain another residence while he was also residing with Ms. Spiker at 1010 S. 4th Street?

4. The file indicates that Mr. Hobbs established gas service at 404 S. Main in Danville, Iowa, on June 4, 2001. Provide the date Mr. Hobbs ceased residing at the 1010 S. 4th Street address and provide any documentation concerning the date he began service at the 404 S. Main address.

5. The file indicates that Mr. Hobbs called IES concerning carbon monoxide at 1010 S. 4th in June 2001. Please provide all information and documentation concerning this telephone call and any response by IES.

6. The file indicates that Mr. Hobbs and Heidi Spiker are living together at 404 S. Main in Danville. Did Ms. Spiker move into the Danville address at the same time that Mr. Hobbs established service and, if not, when did she move in?

7. Please provide copies of any tariffs that the party believes apply to the facts in this docket and discuss how those tariffs apply to the relevant facts.

8. Please provide a calculation of the unpaid balance for gas service at 1010 S. 4th Street in Burlington, Iowa, at the time service was discontinued to the account of Heidi Spiker.

9. Provide any other relevant information and documentation.

10. The parties will be requested to brief the legal issues after the conclusion of the evidentiary hearing.

IT IS THEREFORE ORDERED:

1. The complaint of Dustin Hobbs against IES Utilities Inc., filed on November 14, 2001, is docketed for formal complaint proceedings in Docket No. FCU-01-2.

2. Any interested person may file a petition to intervene in this docket on or before January 2, 2002. Any response to a petition to intervene should be filed within five days of the date the petition is filed and served.

3. The following procedural schedule is established:

a. Complainant shall file any prepared direct testimony, with supporting exhibits and workpapers, on or before January 17, 2002.

b. Respondent, Consumer Advocate and Intervenors shall file any rebuttal testimony, with supporting exhibits and workpapers, on or before February 1, 2002.

c. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 10 a.m. on February 26, 2002, in the Board's hearing room at 350 East Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request appropriate arrangements be made.

d. Any party desiring to file a brief shall do so on or before March 8, 2002.

4. In the absence of objection, all data requests and responses referred to in the oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making the reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five

days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 18th day of December, 2001.